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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,914	08/31/2001	Donald J. Remboski	IA00012	2193

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MOTOROLA, INC.
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EXAMINER	
LOUIS JACQUES, JACQUES H	
ART UNIT	**PAPER NUMBER**
3661	

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/943,914	REMBOSKI ET AL.	
	Examiner	Art Unit	
	Jacques H. Louis-Jacques	3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 August 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogerson in view of Muller et al [6,389,468].

Rogerson discloses a modular entertainment system configured for multiple broadband contents delivery incorporating a distributed server. According to Rogerson, there is provided an apparatus (entertainment system) comprising an active network (distributed network serve, wireless LAN), a vehicle (aircraft or other vehicles) and first and second devices (plurality of devices) communicatively coupled through the active network. See abstract. Rogerson does not particularly disclose the data packet having a header portion, a data portion, a trailer portion and an active portion. Muller et al, on the other hand, discloses a method and apparatus de distributing network traffic processing on a multiprocessor computer. According to Mullet al, a plurality of computers (devices) is communicatively coupled by an active network, where a data packet is provided for communicating data between the computers or devices. As depicted in figure 2 and described in the specification at pages 12-13, the data packet comprises a header portion, a data portion, a trailer portion and an active portion. According further to Muller et al, the active portion of the data packet is integrated with either the header portion, or the

data portion o the trailer portion. See column 2. Furthermore, as described in column 6, for example, the active portion of the data packet comprises a plurality of active network elements coupled by connection media, wherein the active portion contains active data related to the configuration of the active network elements. Still in column 6, the active network elements can be a switch, a router or a bridge. As described in column 9, for example, Muller et al discloses a packet state, wherein the active network is operable o communicate the data packet correspond to the packet state. See also columns 11-12. The apparatus of Muller et al can be used as in a vehicle. Thus, it would have been obvious to one skilled in the art at the time of the invention to look into the distributing network art to modify the vehicle network of Rogerson by incorporating the features from the distributing network traffic processing of Muller et al because such modification, as suggested by Muller et al, would provide an efficient transfer of data, thereby improving traffic and providing adequate performance.

3. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogerson in view of Macera et al [5,490,252].

Rogerson discloses a modular entertainment system configured for multiple broadband contents delivery incorporating a distributed server. According to Rogerson, there is provided an apparatus (entertainment system) comprising an active network (distributed network serve, wireless LAN), a vehicle (aircraft or other vehicles) and first and second devices (plurality of devices) communicatively coupled through the active network. See abstract. Rogerson does not particularly disclose the data packet having a header portion, a data portion, a trailer portion and an active portion. Macera et al, on the

other hand, discloses a system having central processor for transmitting packets to another processor, wherein the processors (devices) are communicatively coupled by an active network and a data packet is provided for communication of data between the processors. According to Macera et al, the data packet includes a header portion, a data portion, a trailer portion and an active portion. Macera et al also discloses that the active portion include includes a plurality of active network elements, wherein the active portion contains active data related to the configuration of the active network elements, and wherein at least one of the active network elements comprise a switch, a bridge or a router. See columns 1, 3-4 and 15-16. additionally, Macera et al discloses that the active portion contains active network timing information. See column 2. In addition, Macera et al discloses a packet state, wherein the active network is operable o communicate the data packet correspond to the packet state, and that the active portion of the data packet can be integrated with either the header portion, or the data portion o the trailer portion. Therefore, it would have been obvious to one skilled in the art at the time of the invention to look into the field of transmitting generic packets to modify the vehicle network of Rogerson by incorporating the features from the internetworking system for exchanging packets of information between networks of Macera et al because such modification, as suggested by Macera et al, would provide maximum reliability, flexibility and performance capability.

Response to Arguments

4. Applicant's arguments filed August 27, 2003 have been fully considered but they are not persuasive.

In arguing the rejections, Applicant relied on three different points (traverses (i), (ii) and (iii)).

In Traverse (i), Applicant contended "there is no motivation or suggestion contained in the cited art to combine the teachings of the reference." In support of such contention, Applicant cited In re Lee (Fed. Cir. 2002), ACS Hospital Systems Inc. v Montefiore Hospital (Fed. Cir. 1984) and Fromson v Advance Offset Plate (Fed Cir. 1985).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the claimed limitations along with the motivation to combine are found in the prior art.

Furthermore, in reference to Ex parte Levengood, 28USPQ2d, 1301, it is stated that, in order to establish a prima facie case of obviousness, it is necessary for the examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the applied art, or in the form of generally available knowledge, that one having ordinary skill in the art would have led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. See, for example, Carella v. Starlight Archery, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986);

Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985).

Also in reference to Ex parte Levengood, 28USPQ2d, 1301, "Obviousness is a legal conclusion, the determination of which is a question of patent law. Motivation for combining the teachings of the various references need not be explicitly found in the references themselves, In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Indeed, the examiner may provide an explanation based on logic and sound scientific reasoning that will support a holding of obviousness. In re Soli, 317 F.2d 941, 137 USPQ 797 (CCPA 1963).[2]"

In Traverse (ii), Applicant asserted that "the combination does not provide Applicant's claimed invention".

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Now let's turn to the references. As pointed out in the rejection, Rogerson discloses a modular entertainment system configures for multiple broadband content delivery incorporating a distributed systems. As set forth in the abstract, "individual nodes of the distributed network architecture host individual ones of the various communication application such that a central server and centralized distribution network is not longer necessary". Moreover, on page 2, section [0015], Rogerson discloses that "each of the display devices is configures to function as a network server, as well as a client device

...] See also, sections [0016], [0019]. It is clear, at least from these sections, that Rogerson discloses an active network as defined by Applicant on page 4 of the response.

In Traverse (iii), Applicant argued that "allegations that portions of Applicant's claims 'would have been obvious' are not a proper test for obviousness under 35 U.S.C. 103(a)", citing Lewmar Marine Inc. v Barient Inc. (Fed. Cir. 1987), Raytheon Co. v Roper Corp. (Fed. Cir. 1983), Diversitech Corp. v Century Steps Inc. (Fed. Cir. 1988), In re Chupp (Fed. Cir. 1987), Fromson v Advanced Offset Plate (Fed. Cir. 1985), In re Piaecki (Fed. Cir. 1984) and Carl Scheneck A.G. v Norton Corp. (Fed. Cir. 1983).

In response to applicant's argument that the combination does not provide "the results and advantages produced by [the] claimed subject matter", the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

To the extent that the response to the applicant's arguments may have mentioned new portions of the prior art references which were not used in the prior office action, this does not constitute new a new ground of rejection. It is clear that the prior art reference is of record and has been considered entirely by applicant. See In re Boyer, 363 F.2d 455, 458 n.2, 150 USPQ 441, 444, n.2 (CCPA 1966) and In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 267 (CCPA 1961).

The mere fact that additional portions of the same reference may have been mentioned or relied upon does not constitute new ground of rejection. In re Meinhardt, 392, F.2d 273, 280, 157 USPQ 270, 275 (CCPA 1968).

In light of the foregoing, the rejections are sustained and this office action is made final.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques H. Louis-Jacques whose telephone number is (703) 305-9757. The examiner can normally be reached on M-Th, 7:30 AM - 4:00 PM (Eastern Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William A. Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1111.

Jacques H. Louis-Jacques
Primary Examiner
Art Unit 3661

/jlj
September 23, 2003